

REMARKS

ON *M. D. 1719.*

Dr. SHERLOCK's

A N S W E R

TO THE

Lord Bishop of Bangor's

Late BOOK, &c.

In further Vindication of the true Mean-
ing of the CORPORATION and
TEST-ACTS.

By MOSES LOWMAN.

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REMARKS, &c.



HE Revd. Dean of *Chichester*, in his late Answer to the Lord Bishop of *Bangor*, has done me the Honour to take Notice of something I had offered, concerning the Intention of the Legislature in the *Corporation* and *Test-Acts*. As what I then offered was in my Apprehension material to shew, that the Dean in his *Vindication*, had supposed more of them than they would fairly allow him to suppose, *viz.* That it has been all along a wise and uniform Intention of the Legislature, to guard the Ecclesiastical Constitution of the Realm against all Sorts of *Non-Conformists*; by requiring constant Communion with the Church of *England*, as a Test of full Affection for the Ecclesiastical Establishment: I therefore endeavoured to shew, that these Laws have not in their true Intention, and the Design of the Legislature,

gislature, put such an evil Mark on all the *Protestant Dissenters*, and supposed their Principles and Tempers so dangerous to the Peace of Church and State, that they have judged it unfit to trust any Civil Power in their Hands.

As the great Weight of the Dean's *Vindication* lies upon this Supposition; and which he thinks he has effectually supported in his late Answer: I shall beg Leave to give the World this one Trouble more, and offer my Reasons why I cannot yet give into the Dean's Supposition, notwithstanding what he has offered afresh to confirm it.

There are Two Things the Dean objects to me, (p. 8.) the One, that I do not very candidly state the Case; the Other, that however my Inference is ill-grounded.

As to my State of the Case, I hope it may yet pass for candid, when it is re-consider'd. My State of the Case was this, That the Session of Parliament in which the *Corporation-Act* was passed, was opened on the 8th of May, 1661, which was a Year before the present Ecclesiastical Constitution was settled by the new *Act of Uniformity*. Now, the Dean allows, that what I said of the opening the Session was true; but objects, the *Corporation-Act* was not ready at the opening of the Session (nor did I say it was) for it did not pass 'till the 20th of December, 1661, and the *Uniformity-Act* passed the 19th of

May

May following, though it did not take Place till *August, 1662.*

Now the Dean's State of the Case differs but very little from mine. I said the Session was opened a Year before the *Act of Uniformity* passed. The Dean says, there were five Months between the passing of the Two *Acts*, and eight Months before the last of them took Place. But for all Use I intended to make of the State of the Case, the Dean's 8 Months between the Two *Acts* will serve as well as my own 12 Months from the opening of the Session to the Time when the last *Act* passed: So that I think there will be no great Difference remaining between the Dean and me as to that Point.

But I fear we shall not so easily agree, whether my Inference from it be well or ill-grounded. My Inference was this, that the *Corporation-Act* did not require any such Adherence to the new Ecclesiastical Constitution as the Dean contends for, nor any such Affection but what may be consistent with the Principles of *Protestant Dissenters*.

The Dean has said nothing in Answer to the concurrent Proofs I had mentioned to support that Inference, viz. the Number of Ministers then employ'd in the Church itself, the Testimony the King gave to many of them of their Affection to him, and Zeal for the Peace of Church and State, the Trust he repos'd in them by his Commission; the
Lord

Lord Chancellor's Speech, and another Act of Parliament, shewing other Reasons for it than that which the Dean supposes.

But the Dean chuses rather to insist upon another Argument as decisive for his own Sence, and therefore to be sure subversive of mine. (p. 8.) ‘That the *Corporation-Act* requires the Sacraments shall be received according to the Rites of the Church of *England*. Therefore whether the New *Act of Uniformity* was in Being, or no, yet the Old One certainly was; and Mr. *Lowman* will not pretend, that the *Protestant Dissenters* were readier to comply with the Old *Act of Uniformity* than the New One.’

To bring this Matter to as short an Issue as I can: As I did not before, neither shall I now pretend, that the Old *Act of Uniformity* was not in *Being*: Nor will I pretend, the *Protestant Dissenters* were readier to comply with the Old One than with the New One; yet I would still take the Liberty to believe, that this does by no Means destroy the Truth of my Inference; that, this notwithstanding, the Legislature in the *Corporation-Act* might not require any Affection to our *now Ecclesiastical Establishment* inconsistent with the Principles of many *Protestant Dissenters*: The Reasons why I still believe so, are the undeniable Circumstances of Church and State, when the *Corporation-Act* passed.

For

For though the Old *Act of Uniformity* was then in *Being*, yet the *Execution of it was actually suspended*. The whole Nation took it for granted, that *Act* was not to *remain*, and they looked for the *New Act of Uniformity*, to see what their Ecclesiastical Establishment was to be. The Foot on which the Affairs of Religion then actually stood, was the King's Declaration from *Breda*, and his after Declaration touching Ecclesiastical Affairs. Mr. *Collier* has given us a very just Account of this Matter: He censures that Commission, as carrying the Prerogative to an * * Extraordinary Extent. That it seems ' not only to reach into the Business of Synods, over-rules the Canons, and disables ' the Discipline of the Church, but over ' and above, dispences with Statutes to the ' Construction of a *Repeal*.' What Mr. *Baxter* says of the Old Laws being in Force against the *Non-Conformists*, is very consistent with this, for as Mr. *Collier* further observes, ' † For this Reason it was overlooked ' at the Sessions and Assizes in several Places ' in the Country, where the Dissenting Ministers were indicted for not conforming, ' pursuant to the Laws in Force; however ' upon Application to the King and Lord ' Chancellor they were commonly discharg'd. ' And thus, generally speaking, the *Declara-*

* *Ecclesiastical Hist.* Vol. 2. p. 876.

† *Ibid.*

tion

‘*tion suspended the Execution of the Law.*’ And that such was the Case, the Continuance of so many *Non-Conformists* in the Church, till ejected by the New *Act of Uniformity*, is a decisive Proof.

The Dean has one further Observation to support his Opinion. (p. 9.) ‘That the House of Commons however declare it to be in Force, in their *Address to the King*, in Feb. 1662-3. In which they tell him, That his *Declaration* from *Breda* ought not to be taken as a Promise on his Part to give Indulgence, because he was not capable of making such a Promise, there being Laws of *Uniformity* then in Being, which could not be dispensed with but by Act of Parliament.’

In Answer to this I would beg Leave to observe, That this *Address* of the House of Commons in Feb. 1662-3. was upon another Occasion, and had a proper Respect to the *New Act of Uniformity*, and when it is most certain the *Old Act of Uniformity* was out of Question. It may not be amiss to represent this Case in Mr. Collier’s Words. * ‘In December following (that is, after the *new Act of Uniformity* was passed) his Majesty set forth a *Declaration*, in which among other Things he declared his Resolution to maintain the (now) *Act of Uniformity*, only he

' should dispence with some Matters in it'. Then Mr. Collier makes this Remark, ' The House of Commons might probably suspect this Toleration might comprehend more Perswasions than they design'd should be shelter'd ; and over and above, they might be apprehensive the dispensing in this Matter should carry the Prerogative too far, press the Constitution, and bear down upon Property and Civil Rights. And hereupon it was they resolved upon this *Address*.'

Now any Man that considers that *Address* in this Light, will easily see it has no Regard to the State of Affairs *before* the New Act of Uniformity ; but principally, that the King ought not to be pressed with his Declaration *any further*, as they express it ; that is, now the new Act of Uniformity was settled : because it was not a Promise in it self, as they continue, ' but only a gracious Declaration of your Majesty's Intentions to do what in you lay, and what a Parliament should advise your Majesty to do, and no such Advice was ever given, or thought fit to be offered.'

However, though the House of Commons thought fit to reason thus *when* a new Act of Uniformity was passed, yet they took no Notice of any such Thing *before*, during the whole Time that Act was in *Expectance* ; and this is the more remarkable, forasmuch as the King's Declaration from *Breda* was sent to the House of Lords, and his After-Declara-

ration touching Ecclesiastical Affairs, was communicated to both Houses in a set Speech by the Lord Chancellor, as we shall see presently. Must not the total Silence of the Parliament in such Circumstances be taken as a *tacit Consent* to the King's Intentions in those Declarations, and Acceptance of them 'till such Time as the State of Religion should be further settled?

Besides this, the Dean in pushing his Argument against another Gentleman, has the Goodness to give an undeniable Proof, that the Sacramental Qualification in the *Corporation-Act* could have no Regard to the *old Act* of Uniformity. For as he observes, (*p. 10.*)

' Though the *Act* was made in 1661, yet
 ' the receiving the Sacrament was not made
 ' a Qualification for any Office to which any
 ' Person was called or elected before *March*
 ' 25, 1663, and the *present Act* of Unifor-
 ' mity took Place in *August*, 1662. But be-
 ' fore *March*, 1663, there could be no Que-
 ' stion in Law about the Qualification within
 ' the Meaning of the *Corporation-Act*; as
 the Dean truly represents the Case. And
 therefore to be sure there could be no Que-
 stion in Law about it by the *old Act*, which
 was not by his own Observation so much as
 in *Being* several Months before that Time.

Having thus considered the State of the *old Act*, I would offer something further with Respect to the true State of the *new Act*, *before* it was passed. This will I hope also justify

justify the Account I gave of the *Corporation-Act*, and Meaning of the Sacramental Test in it.

Here we shall find, that as the King's Declarations suspended the *old Law*, they were given out, and generally taken to be the *Plan* on which the *new Act* was to be form'd. I shall also represent the State of this Case in Mr. Collier's Words, who cannot be suspected to have given an Account in Favour of the *Dissenters*, or to have framed one to answer any Suppositions that may have been imagined since his Writing. Thus then he represents it.

* * The *Presbyterian* Ministers were told,
 ' The King would put all he thought proper
 ' to give them into a Declaration. That
 ' they should see the Instrument before it
 ' was publish'd, and have Liberty to report
 ' what they happen'd to dislike. A Copy
 ' of this Declaration was accordingly sent
 ' them by the Lord Chancellor *Hyde*. Some
 ' little Time before it was issued out, this
 ' Lord gave Notice of it in a Speech to
 ' the Parliament, in which he acquaints the
 ' Houses; † It had cost the King many a Sigh,
 many a sad Hour, when he consider'd the almost
 irreparable Reproach the Protestant Religion
 hath undergone from the Divisions and Distra-

* *Ecclesiastical History*, Vol. 2. p. 873.

† *Lord Chancellor's Speech*.

etions which have been so notorious in this Kingdom ; what Pains he had taken to compose them, after several Discourses with pious and learned Men of different Perswasions, you will shortly perceive by a Declaration, which he will publish on that Occasion, by which you will see his great Indulgence to those who can have any Pretension from Conscience to differ from their Brethren.

‘ When the *Presbyterian* Divines had perused the Declaration, and delivered Minutes of their Remarks to the Lord Chancellor, a Day was fixed for his Majesty’s perusing the Declaration, as the Lord Chancellor had drawn it. Accordingly the King came to the Lord Chancellor’s, with the Dukes of *Albemarle* and *Ormond*, the Earls of *Manchester* and *Anglesea*, the Lord *Hollis* and some others of the Court : With these appeared *Sheldon* Bishop of *London*, *Morley* Bishop of *Worcester*, *Hinchman* Bishop of *Salisbury*, *Cosens* Bishop of *Durham*, *Gauden* Bishop of *Exeter*, Dr. *Hackett*, Dr. *Barwick*, Dr. *Gunning*, &c. On the other Side, the *Dissenters* were represented by *Reynolds*, *Calamy*, *Ash*, *Wallis*, *Manton*, *Spurstow*, *Baxter*, and some others.

‘ The Busines of this Day was not to argue, but as the Lord Chancellor read the Declaration, each Party was to speak their Exceptions, and after all, the King was to over-rule the Debate, and settle the Form.’

In this solemn Manner the King’s Declaration was settled and published ; and may ther-

therefore well be taken, for what the King caused the *Presbyterian* Ministers to be told it was, what was thought proper to grant them, that is, as a Plan of the *designed* Uniformity.

I shall omit the many Concessions in other Points, and only observe what was granted with Respect to the Liturgy, and by Consequence with Respect to the Rites of the Church in the Sacrament. * ‘ Since we find ‘ some Exceptions made against several ‘ Things therein (the Liturgy), we will ap- ‘ point an equal Number of Divines of both ‘ Perswasions to review the same, and make ‘ such Alterations as shall be thought most ‘ necessary, and some additional Forms in the ‘ Scripture-Phrase, as near as may be suited ‘ unto the several Parts of Worship, and that ‘ it be left to the Ministers Choice to use ‘ One, or the Other, at his Discretion. And ‘ in Compassion to divers of our good Sub-‘ jects, who scruple the Use of it, as now ‘ it is, Our Will and Pleasure is, that none ‘ be punished or troubled for not using it, ‘ until it be *review'd, and effectuall reformed* ‘ *as aforesaid.*’ And further, ‘ Therefore our ‘ present Consideration and Work is to gra-‘ tify the private Consciences of those who ‘ are grieved with the Use of some Ceremo-‘ nies, with indulging to, and dispensing

* King Charles's Declaration.

‘ with

‘ with their omitting those Ceremonies.’ In particular, with Respect to the most scrupled Ceremony of the Sacrament, after Mention of advising with a National Synod, it is added, ‘ And upon such Advice we shall use ‘ our utmost Endeavour that such Laws may ‘ be establish’d, as may best provide for the ‘ Peace of Church and State. PROVIDED, ‘ that none shall be denied the Sacrament of ‘ the Lord’s Supper, though they do not use ‘ the Gesture of Kneeling in the Act of re-
ceiving.

Could a Nation think otherwise of such a Declaration, than as a plain Intimation of what was design’d, as the *future Settlement* of the Ecclesiastical Constitution. And if so, can it be absurd to suppose, that an Act requiring Conformity to the *Rites* of the Church *thereafter* to be determined, (for such were the Rites to take Place in 1663, and the *only Rites* a Qualification could regard that was not to take Place ’till that Time:) I say, can it be absurd to suppose, a Conformity to those Rites inconsistent with the Principles of many *Protestant Dissenters*, when this Declaration was in Force, and given out as the designed Plan of that Act of Uniformity, which was to determine what the Rites of the Church should be: When the Nation was given in so solemn a Manner to understand, that the then Liturgy, and therewith the Rites belonging to it, and in particular, the *most scrupled Rites* of receiving the Lord’s Supper

Supper should be reviewed, and further also, effectually reform'd as aforesaid? For certainly what was contain'd in that Declaration is not inconsistent with the Principles of many of the present *Non-Conformists*, and especially of those with whom the Dean was chiefly concern'd in this Argument.

There is but one Thing more of any Consequence as to this Point: The Dean's supposed Reason of the particular and very large Power given to the Commissioners by the *Corporation-Act*. The Dean observes, * 'This extraordinary Power ceased at the same Time the Sacramental Test commenced, which shews, I think, for what End chiefly the extraordinary Power was granted, viz. for the effectual Exclusion of such as were intended to be excluded by the Test, or as he after explains it, such as were justly suspected of Non-Conformity.' What Stress the Dean lays upon this Observation may appear from these Words. ' If his Lordship or his Friends can give better, or other Reasons for not requiring the Sacramental Test of any in Office before 63, and of the extraordinary Power granted to the Commissioners till that Time, and no longer, I should be glad to hear them; in the mean while this Argument appears to me decisive in this Case.'

* Pag. 12, 13.

What his Lordship, or his Friends may think fit to do in Answer to this Challenge, I cannot say. As for my self, I have not the Vanity to assume the Character of one of his Lordship's Friends, how ambitious soever I should be of such an Honour. But as a Lover of Truth, I shall venture to give the Dean some *other* Reasons; whether they are *better* or no, I must leave the World to judge.

First, It should seem strange, that if the *Dean's Reason* was chiefly the End for which that extraordinary Power was granted; there should be no Hint of it in the *Clause* that granted it, but instead thereof a very *different Reason* assign'd for it. ‘They have this ‘Power (says the Act it self §. 8.) if the ‘said Commissioners, or the major Part of ‘them then present, shall deem it expedient ‘for the *Publick Safety*.’ When the Dean had formerly found out the Regard this Act had to all *Non-Conformists*, it was from another Expression, *Preservation of Publick Peace both in Chnrch and State*. Now if this Power was given the Commissioners chiefly as the Dean says for the Sake of Dissenters from the Church; how comes it to pafs, that the very Name of *Church* is dropt in it, and only the general Words of *Publick Safety* given as the Reason of it? Were there no Reasons of deeming the Continuance of some Persons in Office dangerous to the *Publick Safety*, but that one, not having a full Affection to the Ecclesiastical Establishment? Does not

not the Preamble of the Act it self mention one at least besides, ‘ That the Succession ‘ in Corporations may be probably perpetuated in the Hands of Persons well-affected ‘ to his Majesty?’ One may well suppose one great Reason of it was to guard against Enemies to his Person and Government, it being too well known, says the Preamble, ‘ That notwithstanding all his Majesty’s Endeavours, and unparallel’d Indulgence in pardoning all that is past, nevertheless many evil Spirits are still working.’ Were there then no Persons in Corporations but *Non-Conformists*, whom they might think proper to have remov’d from all Power in them, for the Safety of the King’s Person, and Government. This seems to me a more probable Reason in it self, as well as more strictly agreeable to the general Meaning of publick Safety, which is the very Reason assigned by the Legislature.

Besides, *Secondly*, Postponing the Sacramental Qualification ’till 63, seems to me a further Confirmation of it, *viz.* That as Matters then stood with Respect to the Ecclesiastical Establishment, the Legislature was willing to leave all Ecclesiastical Qualifications on the same Foot. And that the true Reason why they had no Sacramental Qualification then was, because the Nation was in Expectance what the future Rites of the Sacrament should be. And that they were not willing to destroy the Hopes and Expectations

ons of many, that as the Rites formerly in Use should be reviewed, so they should be effectually reformed.

There is yet one Thing more I imagine material to weaken the Dean's Supposition in this Case. That this Power was given to the KING, who was to appoint the Commissioners by his own Commission under the Great Seal. *p. 2.* For the History of those Times sufficiently shews us, That he did by no Means account all *Non-Conformists* such dangerous Persons, while his own Declaration so much in their Favour, was in Being, and as yet in full Force.

If it shall be said, none of those Concessions were meant in earnest; that I think must carry with it a severe Reflection somewhere, and leave no very good Character upon the Designs and Actions of those Times. For to say no more of it, the Manner of giving those Expectations, if nothing was really intended by it, was at least a little too solemn for a mere Jest.

From the *Corporation-Act* the Dean passes to the *Test-Act*. All that I am concerned in on this Head, is to take Notice of the Account he gives of the Time when it passed, and the Posture of Affairs then, with the Use he makes of it. ‘ This will shew (he says) ‘ plainly (*p. 33.*) what the true Intent of ‘ the Legislature was in the *Test-Act*, which ‘ is to be learnt by considering the *Test* as ‘ an additional Security to the Laws then in ‘ Being,

‘ Being, and not by considering what it will do by it self singly, and alone, and in quite another State of Things than that under which it passed, those Laws being no longer in Force.’ Upon this Foot he tells us, ‘ The *Test-Act* wanted not the additional Security of an *Occasional Bill*, to make it an effectual Exclusion of *Non-Conformists* of all Sorts.’ He is indeed pleased to allow, ‘ Had there been a Toleration subsisting when the *Test-Act* passed, and had it been evidently the Practice of any considerable Number of Men, to communicate both in the Church, and in the Meetings, there had been some Colour for his Lordship to say, That the Legislature, when they required the Sacramental Test, did not mean to exclude all *Non-Conformists*.

In this Concession the Dean is pleas’d to grant, That if such was the Posture of Affairs when the *Test-Act* passed, as it will be contrary to his own Account of it, it will also take away his Inference from it; and shew, that the Legislature, when they required the Sacramental Test, did not mean to exclude all *Non-Conformists*; and therefore, that what has been a main Point in View, (p. 32.) That the *Occasional Bill* was meant to preserve the *Test-Act* in its true Sense, is no just Inference from it. I must own; I did suppose, that this was the Posture of Affairs when the *Test-Act* passed, and inferred from it, (p. 43.) That the *Occasional Act* required

more than the *Test-Act*, and was a further Incapacity of many *Protestant Dissenters*, than the *Test-Act* either required or intended. To set this Matter therefore in a clear Light, let the Posture of Affairs when the *Test-Act* passed be a little more distinctly examined.

The late Lord Bishop of *Sarum* has, in few Words, given us a very plain Account of it, in his Speech in the House of Lords. He tells us, ‘ When the Declaration for a general Toleration in 72, was questioned in Parliament, which brought on the Act of the *Test*, the Lord *Clifford* got some to move in Favour of the *Dissenters*, hoping it would have provok’d the one Side or the other, and that the Church-Party might be offended with the Motion, or the *Dissenters* with the refusing it. It was stopt by Alderman *Love*, who desired, tho’ his own Perswasion was well known, that nothing with Relation to them might intervene, to stop the Security, that the Nation, and the *Protestant* Religion would have by that Act. In this he was seconded by most of that Party; so that the Act was obtain’d in some Measure by their Assistance, and therefore it would be hard to turn it against them. — This wrought so much on the House, that they ordered a Bill to be brought in for the Ease of *Protestant Dissenters*, in which little Progress indeed was made, yet to the End of that Parliament the Conventions were held very publickly, and they never

' never passed a Vote, or made an Address
' against them.'

It appears by this, as well as other undoubted Evidence, that the *Dissenters* when the *Test-Act* passed enjoyed the Liberty of their publick Meetings. * The *Merchants Lecture at Pinners-Hall* was then set up, and besides others, Mr. Baxter preached weekly in *Fetter-Lane*. It is true, they had this Liberty only by Indulgence, but they had Reason then given them to expect they should have a Toleration granted them by Law. A Bill *nemine contradicente* was ordered for this End. Mr. Arch deacon *Eachard* has preserv'd the Contents of it †, which were much the same they had after given them by the Act of Toleration at the Revolution. In particular they were to be eased from all Pains and Penalties for meeting together for Performance of any Religious Exercise. There are indeed different Accounts as to the Fate of this Bill. ** The Author of the compleat History of *England* informs us, the Bill passed the House of Commons, but was thrown out by the Lords. But Mr. *Eachard* gives us another, and I believe a truer Account, †† ' It did not go through the House of Lords; but was not stopt there, as is generally re-

* Dr. Calamy's *Abridgment*, Vol. 1. p. 335.

† *History of England*, Vol. 3. p. 316.

†† Vol. 3. p. 292. †† *Ibid.*

' presented, but only accidentally protracted
 ' upon Account of some Amendments, 'till
 ' the King caused the Parliament to break up
 ' before the Amendments could be agreed to
 ' by the Commons, as appears by the Jour-
 ' nals.' By this Account it appears, both
 Houses concurred in the Bill, and the Effect
 of it was only prevented by the King's break-
 ing up of the Parliament; who, as the Bishop
 of Sarum observes, was highly offended with
 the *Dissenters* for giving up his Declaration.

Now if this was the Case, I would beg
 Leave to ask, Whether the Lords and Com-
 mons could be ignorant of some who were
 permitted to hold Places, and at the same
 Time to go to *Conventicles* before the Tolera-
 tion? When at the very Time the Test-Act
 passed, all *Dissenters* had a Permission to go
 to their separate *Meetings* by the King's In-
 dulgence, and the Commons had it in Inten-
 tion, and for ought appears to the contrary
 so had the Lords; however, they had it un-
 der full Consideration, to permit it by Law.
 This Posture of Affairs fully comes up to that
 Supposition, upon which the Dean gives
 Leave to infer, there is some Colour to say,
 (I will venture to add there is good Reason
 to say) that the Legislature when they re-
 quired the Sacramental Test did not mean to
 exclude all *Non-Conformists*. Upon the whole,
 however the World shall judge of the diffe-
 rent Accounts the Dean and I have given of
 the Intention of these Acts: The right stat-
 ing

ing this Point in Law and History will be but a small Step to a full Vindication of them ; for (to remind my Reader of what I once remarked to the same Purpose before,) if all this should prove true which the Dean has advanced as to Fact, tho' I have some Hopes he will find it will not, yet it will not then prove them altogether justifiable ; the Burning of *Hereticks* was not so, though that Guard against *Heresy* had a much longer Use and Continuance among us, than the oldest of these Laws have had a Being ; and the Dean himself is aware he has another Task upon his Hands, to justify them in Right, after all he has attempted in Order to support his supposed Case in Fact.





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